Circuit Court of Prince George's County
Case No. CAL 15-07008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1246

September Term, 2016

AMISTIN PERRERA

v.

HIMAR SANCHEZ, et al.

Wright,
Kehoe,
Berger,

JJ.

Opinion by Berger, J.

Filed: November 14, 2017

This appeal arises from a personal injury lawsuit brought by Amistin Perrera ("Perrera") against Himar Augustin Sanchez ("Sanchez") alleging injuries sustained in an automobile collision that occurred on March 25, 2013. Perrera brought the action in the Circuit Court of Prince George's County.

At trial, Sanchez sought to introduce an insurance information exchange form ("Information Exchange Form") produced by a Hyattsville police officer at the scene of the accident. Perrera objected, arguing that the Information Exchange Form was irrelevant and had not been properly authenticated. The circuit court admitted the form as "a business record, public record."

When the parties were discussing proposed jury instructions, Perrera requested that the circuit court exclude Maryland Pattern Jury Instruction 18:3 ("MPJI 18:3"), which explains the standard of care applicable to a driver faced with "a sudden and real emergency." Although the judge did not make an explicit ruling, he subsequently propounded the instruction to the jury. The jury returned a verdict for Sanchez, and the circuit court entered judgment for Sanchez on July 26, 2016.

Perrera presents two issues for appeal, which we have reworded as follows:

1. Whether the circuit court erred in admitting the Information Exchange Form.

2. Whether the circuit court abused its discretion in giving MPJI 18:3 to the jury.

BACKGROUND AND PROCEDURAL HISTORY

Factual Circumstances

We set forth the facts in the light most favorable to the party that prevailed below. On March 25, 2013, Perrera was driving her family minivan on Queens Chapel Road in Hyattsville, Maryland. Sanchez was driving behind Perrera in an armored truck, which he was operating in the scope of his employment with Garda CL Atlantic, Inc. It was raining that day, and the road was wet and icy. Both vehicles were traveling in the far right lane of two southbound lanes.

Immediately prior to the collision, Perrera was stopped at a traffic light. When the light turned green, Perrera began to accelerate, with Sanchez following behind her. Sanchez was driving no more than twenty miles per hour and maintained a distance of "at least two car lengths" between his vehicle and Perrera's vehicle. Shortly thereafter, Perrera brought her vehicle to a sudden stop due to traffic conditions ahead of her. As soon as Sanchez saw Perrera's brake lights, he applied his brakes. He could not stop in time, however, because his vehicle "hydroplaned" on the slick road. In an attempt to avoid the collision, Sanchez swerved to the right and moved his vehicle onto an elevated grassy area beside the road. Although Sanchez avoided a direct collision, the armored truck clipped the right rear bumper of Perrera's minivan. The accident occurred in the 5300 block of Queens Chapel Road.

Shortly after the collision, a Hyattsville police officer arrived. The officer did not complete a full police report, but instead completed the Information Exchange Form, which he printed out at the scene and provided to Sanchez.

Procedural History

Perrera brought a personal injury lawsuit against Sanchez in the Circuit Court of Prince George's County. At trial, Sanchez sought to introduce the Information Exchange Form. Perrera objected on the grounds that the form was not relevant and had not been properly authenticated. The judge ruled that the Information Exchange Form was "a business record, public record" and admitted it into evidence.

When the parties were discussing proposed jury instructions, Perrera requested that the circuit court refrain from giving MPJI 18:3, which provides the following:

> **Acts in Emergencies.** When the driver of a motor vehicle is faced with a sudden and real emergency, which was not created by the driver's own conduct, the driver must exercise reasonable care for his or her own safety and for the safety of others. The reasonableness of the driver's actions must be measured by the standard of the acts of other drivers of ordinary skill and judgment faced with the same situation. The driver is not required to use the same coolness or accuracy of judgment required of a person not facing a sudden and real emergency.

Perrera argued that "braking or slowing traffic does not rise to the level of emergency." The judge responded that Perrera "left out the snow storm part." At trial, the circuit court gave a paraphrased version of MPJI 18:3 with substantially the same content.[1] Perrera

[1] The judge instructed the jury as follows: "A driver of a motor vehicle, faced with a sudden, real emergency not created by the driver's own conduct, must exercise reasonable care for his or her own safety and for the safety of others. The reasonableness of the driver's actions must be measured by the acts of other drivers of ordinary skill and judgment faced with a similar, and sudden, and real emergency. The driver is not required to use the same coolness or accuracy of judgment required of a person not facing a sudden and real emergency."

again objected to the jury instruction. The proceedings continued, and the jury returned a verdict for Sanchez.

I. Standard of Review

A. Standard of Review for Rulings on the Admissibility of Evidence

"Generally, 'whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court' and reviewed under an abuse of discretion standard." *Under Armour, Inc. v. Ziger/Snead, LLP*, 232 Md. App. 548, 552 (2017) (quoting *Perry v. Asphalt & Concrete Servs.*, 447 Md. 31, 48 (2016)); *see also Copsey v. Park*, 453 Md. 141, 157 (2017) ("We have held that on review, we will not disturb the trial court's evidentiary rulings absent error or a clear abuse of discretion." (internal citations omitted)). A trial court abuses its discretion "where no reasonable person would share the view taken by the trial judge." *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 406 (2012) (quoting *Consol. Waste Indus. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011)).

A trial court has no discretion, however, "to admit hearsay in the absence of a provision providing for its admissibility." *Vielot v. State*, 225 Md. App. 492, 500-01 (2015) (quoting *Bernadyn v. State*, 390 Md. 1, 8 (2005)), *cert. denied*, 446 Md. 706 (2016); *see also* Md. Rule 5-802 ("Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible."). We have explained, therefore, that "[w]hether evidence is hearsay is an issue of law reviewed *de novo*." *Darling v. State*, 232 Md. App. 430, 458 (2017) (quoting *Bernadyn v. State*, 390 Md. 1, 8 (2005)), *cert. denied*, 454 Md. 655 (2017).

B. Standard of Review for Rulings on Jury Instructions

We review a trial court's decision to give or refuse a jury instruction under the abuse of discretion standard. *Stabb v. State*, 423 Md. 454, 465 (2011) (quoting *Gunning v. State*, 347 Md. 332, 351 (1997)). A proper exercise of discretion is "a sound judgment exercised with regard to what is right under the circumstances and without [acting] arbitrarily or capriciously." *Id.* (quoting *In re Don Mc.*, 344 Md. 194, 201 (1996)).

II. The Trial Court Did Not Err in Admitting the Information Exchange Form.

Perrera argues that the Information Exchange Form should not have been admitted in full because Maryland courts apply a general "policy of inadmissibility" to police reports. We hold that the Information Exchange Form falls within the business record exception to the rule against hearsay.

The rule against hearsay operates to exclude any "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801. Such a statement is admissible, however, if it is a record of a regularly conducted business activity, defined in Maryland Rule 5-803 as follows:

> A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation.

When a party seeks to introduce a police report into evidence, we generally admit as a business record "those portions . . . which record the facts obtained by the direct sense impressions of the investigating officer." *Holcomb v. State*, 307 Md. 457, 461-62 (1986). We would admit, for example, "[a] police report indicating that an accident occurred, the parties involved, etc., noting aspects of the accident observable by the investigating officer." *Aetna Cas. & Sur. Co. v. Kuhl*, 296 Md. 446, 454 (1983). We would exclude, however, "those portions which report objectionable hearsay and opinions of the investigator" unless they fall within another exception to the hearsay rule. *Holcomb*, *supra*, 307 Md. at 461-62.

In the case at hand, the Information Exchange Form is not a full police report, but a one-page document designated at the top as a "Motor Vehicle Collision Information Exchange Form." The Information Exchange Form contains the following elements: (1) a statement of the Hyattsville Police Department's policy concerning the investigation of traffic collisions; (2) basic information about the officer and his station; (3) the date, time, and location; (4) a description of the weather at the time the form was completed; and (5) basic information about the persons involved, including vehicle and insurance information. This kind of information, which indicates little more than the occurrence of an accident and the persons involved, is admissible in a police report or similar document. The Information Exchange Form does not contain the officer's opinions about the cause of the collision, the extent of the damage, or any other matter. The description of the weather merely records the officer's direct sense impressions. Although the Information Exchange Form incorporates statements made by Sanchez and Perrera at the scene, the matter

included is merely undisputed personal information with no bearing on the legal issues at stake in the case. We conclude, therefore, that the Information Exchange Form falls squarely within the business record exception to the hearsay rule.

Perrera further argues that we should reverse the circuit court because it failed to address the relevance and authenticity of the Information Exchange Form, which were the stated reasons for her objection. Perrera provides no support, however, for the proposition that a trial court commits error when it admits evidence without an explicit ruling on every ground offered by the objecting party. We give "great deference," moreover, to a circuit court's decision to admit non-hearsay evidence. *Vielot*, *supra*, 225 Md. App. at 500. As discussed above, the Information Exchange Form is not inadmissible hearsay. We will not, therefore, disturb the circuit court's decision on any other grounds absent a clear abuse of discretion. The circuit court made an implicit ruling on the relevance and authenticity of the Information Exchange Form by admitting the form into evidence, and Perrera has failed to show why this Court should reverse that decision.[2]

Even if the circuit court improperly admitted the Information Exchange Form, Perrera did not suffer prejudice as a result. Perrera concedes that the form "was not subsequently referenced in detail" by Sanchez. Perrera claims that the description of the weather as "blowing snow" was prejudicial, but Sanchez's testimony provided ample

[2] Perrera stops short of arguing that the Information Exchange Form should have been excluded as irrelevant or not properly authenticated. Instead, she confines herself to arguing that the circuit court's failure to address these issues was, in itself, grounds for reversal. We will not, therefore, address the relevance or authenticity of the Information Exchange Form.

evidence that driving conditions were hazardous at the time of the accident due to winter weather. Sanchez testified, for example, that it was "dark out, because it was raining, and there was like sleet on the ground." He further testified that "the road was wet already, and there was like, ice." The record shows, moreover, that the jury returned a verdict for Sanchez after deliberating for only twenty-seven minutes. We conclude, therefore, that the jury's verdict did not hinge upon the admission or exclusion of the Information Exchange Form.

III. The Circuit Court Did Not Abuse Its Discretion in Giving MPJI 18:3 to the Jury.

Perrera argues that MPJI 18:3 was not sufficiently supported by the evidence and that the circuit court abused its discretion in propounding MPJI 18:3 to the jury.[3] We disagree. MPJI 18:3 is appropriate where there is some evidence that a sudden emergency forced the defendant to choose between alternative courses of action. Here, Sanchez's testimony and the police officer's description of the weather were sufficient to raise the issue for the jury. Under these circumstances, the circuit court did not abuse its discretion in giving the instruction to the jury.

Maryland Rule 4-325(c) provides that "[t]he court may, and at the request of any party shall, instruct the jury as to the applicable law[.]" In reviewing a trial court's decision to give a jury instruction, we consider "(1) whether the requested instruction was a correct

[3] Perrera also claims that the circuit court failed to give an explicit ruling on MPJI 18:3. Perrera's argument is without merit. The circuit court made a clear ruling when it proceeded to give MPJI 18:3 over Perrera's objections. Moreover, the judge explicitly addressed Perrera's arguments by pointing to the description of "blowing snow" in the Information Exchange Form as evidence supporting an emergency instruction.

statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given." *Stabb*, *supra*, 423 Md. at 465 (citing *Gunning v. State*, 347 Md. 332, 351 (1997)). Here, there is no dispute that MPJI 18:3 is a correct statement of the law that was not covered in the other jury instructions. The only question, then, is whether MPJI 18:3 is applicable under the facts of the case.

A. Jury Instructions Must Be Supported By Sufficient Evidence to Raise the Jury Issue.

A jury instruction is applicable under the facts of the case when the defendant can "point to some evidence sufficient to raise the jury issue." *Porter v. State*, 230 Md. App. 288, 307 (2016) (quoting *Arthur v. State*, 420 Md. 512, 525 (2011)) (internal quotation marks omitted), *rev'd on other grounds*, No. 88 (Md. Aug. 7, 2017). This standard is "a fairly low hurdle for a defendant," which we have articulated as follows:

> Some evidence is not strictured by the test of a specific standard. It calls for no more than what it says--"some," as that word is understood in common, everyday usage. It need not rise to the level of "beyond reasonable doubt" or "clear and convincing" or preponderance. The source of the evidence is immaterial; it may emanate solely from the defendant.

Id. at 307-08 (quoting *Arthur v. State*, 420 Md. 512, 526 (2011)). We must consider, then, whether Sanchez presented sufficient evidence to raise the issue of a sudden emergency.

B. There Was Sufficient Evidence that Sanchez Faced a Sudden Emergency and Chose Between Alternatives.

By its own terms, MPJI 18:3 only applies "[w]hen the driver of a motor vehicle is faced with a sudden and real emergency, which was not created by the driver's own

conduct." A sudden and real emergency may exist when a driver attempts to brake but her vehicle slides on a slippery road. *See Moats v. Ashburn*, 60 Md. App. 487, 493 (1984). Although Perrera relies primarily on *Haney v. Gregory*, the collision in that case occurred in clear, dry weather, and the only emergency alleged by the defendant was the sudden stopping of the vehicle in front of him. 177 Md. App. 504, 525 (2007). The better point of comparison is *Moats*, where multiple witnesses attested to a layer of snow on the road, and where the defendant testified that the cause of the collision was "a default in the brakes or the road was slippery or something." *Supra*, 60 Md. App. at 489-92. In that case, we concluded that "[a] proper instruction on the facts of this case would have included the sudden emergency doctrine." *Id.* at 493.

In the instant case, there was sufficient evidence that Sanchez's vehicle slid on the slippery road, creating a sudden and real emergency. Sanchez testified that the road was wet and icy at the time of the collision, causing his vehicle to hydroplane when he applied the brakes. Sanchez further testified that he was driving no more than twenty miles per hour and maintaining a distance of two car lengths or more between his vehicle and Perrera's vehicle. Under these circumstances, we conclude that Sanchez presented sufficient evidence to raise the issue for the jury.

It is not enough, however, for a defendant to offer evidence of a real and sudden emergency. She must also offer evidence that the emergency forced her to choose between alternative courses of action. *See Willis v. Ford*, 211 Md. App. 708, 724, (2013) ("In our view, Ms. Willis was not entitled to an 'Acts in Emergencies' instruction because Ms. Willis' own testimony established that she was not required to choose between

alternatives."); *see also Haney*, *supra*, 177 Md. App. at 525 ("Even if there were a sudden stopping by the Plaintiff, there was no evidence that Defendant was required to make an immediate choice between alternatives."). In *Rustin v. Smith*, we held that MPJI 18:3 was inappropriate even though the defendant offered evidence that his vehicle hydroplaned on a slick road. 104 Md. App. 676, 682 (1995). Despite the similarity of the case to *Moats*, we decided that Rustin was not entitled to the emergency instruction because "there [was] no evidence that he had any options, made any decisions, or took any specific action whatsoever to avoid the collision." *Id.*

In the case at hand, there was sufficient evidence that Sanchez chose between alternative courses of action. Sanchez testified that he attempted to avoid Perrera's vehicle by swerving off the road. Sanchez also testified that there was traffic in the left lane at the time of the accident. The jury could have inferred that Sanchez, unlike Rustin, had time to act, decided to act, and took specific actions to avoid a direct collision. Because there was sufficient evidence that Sanchez faced a sudden emergency and chose between alternatives, MPJI 18:3 was applicable under the facts of the case. We hold, therefore, that the circuit court did not abuse its discretion in giving MPJI 18:3 to the jury over Perrera's objections.

Because we hold that the circuit court did not commit error or clear abuse in the rulings challenged by Perrera, we affirm the judgment of the circuit court for Sanchez.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.